CC 00-175

Before the
Federal Communications Commission
Washington DC 20554

In the Matter of		
Biennial Regulatory Review	)	
	)	
Staff Report of September 19, 2000	)	FCC 00-346
	)	

To: The Commission

COMMENTS OF THE COALITION OF INDEPENDENT CELLULAR CARRIERS

Pursuant to the Commission's invitation to submit comments, in its Public Notice, *Biennial Review 2000 Staff Report Released,* FCC 00-346, released September 19, 2000 ("*Biennial Review Notice*"), the Coalition of Independent Cellular Carriers ("Coalition") hereby submits its comments upon the Staff Report.[1]

The Coalition's comments are focused upon one specific portion of the Staff Report, ¶106, the CMRS Spectrum Cap Review. In summary, the Coalition believes that Section 22.942 of the rules, 47 C.F.R. §22.942, should be eliminated entirely as redundant and unnecessary. In addition, the Coalition believes that the spectrum cap should be raised to 55 MHz across the board.

I. CMRS Spectrum Is Fungible; Section 22.942 Is Therefore Obsolete

The Coalition believes that with the continuing explosive success of the various wireless carriers offering wireless broadband service using spectrum other than traditional Part 22 "cellular"

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[1]The members of the Coalition are: Alabama Wireless, Inc., Tennessee Cellular Telephone Company, Commnet Wireless, Inc., Mericom, Inc. and Suburban Cellular, LLC. Each of the Coalition's members are existing independent cellular licensees, operating cellular systems in either rural areas or other areas that the major carriers originally had decided not to serve. Each has played an important role in bringing the benefits of the wireless revolution to areas that otherwise would have been left behind. Each has done so, and continues to do so, with the implementation of ever-increasing E911 and CALEA requirements through capital expenditures from its owners.

spectrum, the various broadband wireless services are fungible and identical to consumers, whether the licensee uses 800/900 MHz "cellular" spectrum (*e.g.*, the Coalition members), 800/900 MHz "SMR" spectrum (*e.g.*, the highly successful Nextel), or 1.9 GHz "PCS" spectrum (*e.g.*, such highly successful carriers as AT&T Wireless, Sprint Spectrum, VoiceStream, Powertel, Leap Wireless and TeleCorp).[2] However, 47 C.F.R. §22.942 prohibits any person from controlling both the cellular "A" frequency block licensee and the frequency "B" block licensee in overlapping geographic areas, even where that person's control of both spectrum blocks does not exceed the spectrum cap. In the current era of dual-band, dual-mode phones (*i.e.*, just about every phone sold today),[3] Section 22.942 makes no sense.

The Commission adopted Section 22.942 (originally codified as §22.902(b)(5) and later re-numbered) back in 1991 as an anti-monopoly rule, at a time when there was no spectrum allocated

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[2]A good example of the fungibility of wireless broadband services, not only functionally but in the minds of the consumer, is a recent series of articles in the *Washington Post* Business Section. In a question-and-answer article entitled *How to Pick a Cell-Phone Service* (Friday September 29, 2000, page E13, copy attached hereto as Exhibit 1), the *Post* listed the following carriers as being local providers of "cell-phone" service in the Baltimore/Washington metropolitan area: AT&T, Cellular One, Verizon, Nextel, Sprint, and VoiceStream. In the Baltimore/Washington metro area, only two of those "cell-phone" providers -- Cellular One and Verizon -- utilize Part 22 "cellular" frequencies to provide service.

[3]For example, in the Baltimore/Washington area, the only two carriers that ever offered analog cellular service are Cellular One and Verizon. Cellular One no longer even offers analog phones either from its stores or over its web site, while at Verizon, "greater than 90 percent of our new . . . customers are digital," according to a company spokeswoman. *Washington Post, "The Decline (But Not Fall) of Analog Cellular,"* Friday, September 29,2000, page E15 (copy attached as Exhibit 2). As that article noted:

> Analog cellular service has, almost overnight, become the telecom equivalent of the black-and-white TV set the store keeps on a shelf in the back. It's there, it's cheap to pick up and it still works -- but hardly anybody buys one these days and the store long ago stopped bothering to advertise it.

Id. Analog exists now almost entirely as a back-up for the digital system, and to allow incoming roamers using different digital technology to roam.

for broadband wireless in the 1.9 GHz band, and when the notion of using heavily-encumbered SMR spectrum to provide broadband wireless service was still just an abstract idea. *See First Report and Order and Memorandum Opinion and Order on Reconsideration*, 6 FCC Rcd. 6185, 6227-28 (1991) ("*Unserved Area Order*"). At that time, the only spectrum allocated for broadband wireless service was the 50 MHz allocated under Part 22, and the only broadband wireless systems operating were those licensed as "cellular" under Part 22.

In *Unserved Area Order*, the issue before the Commission was whether, as some commenters had proposed, one person could hold ownership interests in each of the two competing licensees (*i.e.*, in 100% of the allocated broadband wireless spectrum) in a single geographic area. The Commission held that a single person could hold minority interests in both competitors, but could not have controlling interests, thereby enabling each of the two competitors in any particular market to obtain equity funding from the same source, so long as that source's dual ownership interests did not present a threat to competition. *Id.* Thus, the Commission recognized that due to the capital-intensive nature of the broadband wireless industry, the need to preserve competition had to be balanced against the need to obtain continued access to funding for expansion and introduction of new services.

To the extent that Section 22.942 prevents any one person from amassing too much broadband wireless spectrum in a single geographic area, it is duplicative of the spectrum cap rule and unnecessarily redundant. As discussed above, in no way does Section 22.942 reflect any policy "judgment" that the spectrum licensed under Part 22 is "better" than the other spectrum licensed for broadband wireless purposes under either Part 24 or Part 90 -- at the time the rule was adopted, the 50 MHz allocated in Part 22 was the only broadband wireless spectrum allocated.

Section 22.942 is thus completely outdated and at odds with reality. Today, there is 90 MHz

of broadband wireless spectrum allocated under Part 24 of the Rules, and approximately 20 MHz more (depending upon the number of incumbents per market) allocated under Part 90. Far from being the only spectrum available, the old Part 22 allocation is now just a fraction of the spectrum used for broadband wireless. Moreover, digitally-based broadband wireless carriers using Part 24 or Part 90 spectrum are taking increasing market share, and represent the large majority of new subscribers nationwide.

Broadband wireless spectrum is fungible in this age of dual-band, dual-mode phones, and if anything, the old Part 22 cellular carriers, who must junk their analog systems before they have been fully depreciated, are at a disadvantage compared to their Part 24 and Part 90 competitors. The Commission can adequately protect against abuse of market power by using the spectrum cap approach, without adding the unnecessary and market-skewing layer of regulation created by Section 22.942. Accordingly, Section 22.942 should be deleted as unnecessary, redundant, and liable to distort private market-place decision making. It is the classic example of a rule that should be eliminated as part of a streamlining effort.

II. The Spectrum Cap Should Be 55 MHz across the Board

The Commission earlier increased the spectrum cap to 55 MHz in rural areas, but held off doing so in metropolitan areas. There have been no claimed instances of any abuse of market power in a single rural area since then. Broadband wireless spectrum has become more fungible and identical to the consumer than ever before. There is 160 MHz of broadband wireless spectrum available in any given geographic area, so 55 MHz would represent only 34.375% of the available spectrum. (This is far less than the 50% cap that originally prevailed, in the "pre-PCS" era.) The need for one entity to accumulate sufficient spectrum to deliver new and enhanced services, including wireless data, is increasing. Moreover, many so-called "metropolitan" areas are actually

rural in nature, especially those served by "unserved area" licensees, who pioneered service in outlying areas of what were technically MSAs. Therefore, the time has come to increase the spectrum cap to 55 MHz across the board.

CONCLUSION

The Coalition therefore respectfully requests that the Commission issue a Notice of Proposed Rulemaking that will eliminate Section 22.942 in its entirety immediately, and that would increase the spectrum cap to 55 MHz across the board.

Respectfully submitted,
THE COALITION OF INDEPENDENT CELLULAR CARRIERS

By: _____
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October 7, 2000

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Exhibit I
Page 1

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particular, the ability to fetch e-mail from any Internet-standard account. Others are not—the entertainment content is second-rate fare like lottery numbers and daily horoscopes. And still others have their utility undercut by bad data. "Verizon Finders," for instance, locates nearby restaurants, hotels, theaters, gas stations and car repair shops, but seems to be missing information: A search for local Caribbean restaurants missed my two favorites, including one only four blocks away from my house.

The coolest element in the package is the way Verizon lets you set up your account on a regular computer at its myvzw.com Web site. You can select features you like and winnow your preferred news categories, stocks to watch and phone numbers, then have them beamed to the phone. But you can't prune bookmarks for Verizon's own content partners or edit the clunky, nested bookmark structure reconfigured on the phone while you can add

How to Pick A Cell-Phone Service

Q Okay, so what differentiates these six companies' offerings?

A Each has particular advantages and quirks. If you travel all the time, including in rural areas, look at the no-roaming, no-long-distance plans from AT&T, Cellular One and Verizon. If your travel is mostly from city to city, investigate Nextel, too. If, on the other hand, you mostly roam up and down the Northeast Corridor, Sprint, Verizon and VoiceStream's East Coast calling plans are worth a look. (VoiceStream covers a little more ground, including all of Pennsylvania and Ohio, in its calling area.)

If, on the other hand, you think you'll mostly call around town, Cellular One offers the most price plans (but note our reviewer's experiences with its coverage). Verizon has good area coverage, but its local plans also include the highest roaming rates in the business. If you're just looking for an occasional-use plan, skip Nextel, whose services are geared toward frequent callers.

Don't forget to check each company's digital-coverage map to see if it covers—or claims to cover—your home, office and other regular haunts.

Are these companies all there is? I've seen ads for other wireless providers.

These other companies—MCI WorldCom being by far the biggest—are cellular resellers. They neither own nor operate their own network, instead leasing out other providers' equipment and services.

What's the deal with the different "air interface" digital technologies, like CDMA, TDMA and GSM?

Not much, if you're not a telecom engineer.

Sprint and Verizon employ CDMA (Code Division Multiple Access), in which each call is tagged with its own digital code—sort of how two people speaking a foreign language can hear each other across a crowded room. CDMA is the leading system in the United States; all other things being equal (they never are!), it offers the most calling capacity. AT&T and Cellular One use something called TDMA, short for Time Division Multiple Access, in which multiple calls are squeezed into the same chunk of frequency by assigning each one its own fraction-of-a-second repeating time slot. VoiceStream uses GSM (Global System for Mobile communications), based on time-division principles as well, it's the oldest and most popular technology worldwide. GSM's standout feature here is the subscriber identity module (SIM) card, which can be swapped in and out of different phones to transfer a phone number and account information. Nextel, in turn, uses a different technology called iDEN (integrated Digital Enhanced Network), which also uses time slots to carve up the spectrum but supports data and two-way dispatch radio along with regular phone calls, and runs on a different set of frequencies.

Exhibit I
Page 2

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Should I worry about signing a yearly contract?

The main liability with a contract is that it locks you into a particular cost structure 12 months in advance, when in the future your needs might change. You can switch plans—but you'll usually have to sign up for a new one-year contract then. (AT&T lets you switch without renewing, but only three times a year; Nextel requires a new contract only if you switch to a discounted plan; Cellular One charges $10 if you move to a cheaper plan.)

But the lack of a contract doesn't give you a lot more freedom to switch providers—you can't use one carrier's phone with another's service here, even if both use the same basic digital technology.

Whatever you do, don't sign a contract for a term longer than a year. The industry is moving too fast to make that kind of a commitment.

So how do I decide what plan is right?

Estimate how many calls you will place each month—and how many calls you will get. Then add, oh, 10 percent to that total. See which plans include a monthly total of minutes greater than that. If you're not going to buy a nationwide or regional plan, think hard about when you'd be tempted to use the phone out of town. A few roaming calls a month won't throw your bill out of whack, but it doesn't take too many lengthy calls from the airport to wipe out the savings from using a cheaper local plan.

What about picking out a particular phone?

It's largely a matter of personal taste and budget; the latter depends on what promotions are being offered, which tend to fluctuate almost weekly. Size and battery life are the most important factors; if you want to try out the wireless Web, you'll need a larger-than-normal screen.

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Join FFWD's Fast Friday Club—more than 7,100 members strong—to get our monthly e-mail newsletter, packed with gossip, commentary and previews of future stories, plus the occasional request for your input. To join, send an e-mail to **listserv@listserv.net**. Leave the subject blank; in the message body, type: **subscribe ffwd [your name]**.

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e-vents

Work With Me—Monday, Oct. 2, 7:30 p.m. At a general meeting of the Capital PC User Group, Microsoft representatives will demonstrate Windows Me's multimedia capabilities. National Institutes of Health, Masur Auditorium, Building 10 (Clinical Center), 9000 Wisconsin Ave., Bethesda. http://cpcug.org

Tech Patents—Tuesday, Oct. 3, 7-9 p.m. A meeting of the Washington, D.C. chapter of the Internet Society will bring together three experts to discuss the U.S. Patent Office's attempts to keep up with the increasing pace of technology. Booz-Allen Hamilton, Allen Building, 8283 Greensboro Dr., McLean. http://www.dcisoc.org

Exhibit 2

The Decline (But Not Fall) of Analog Cellular

By ROB PEGORARO
Washington Post Staff Writer

Analog cellular service has, almost overnight, become the telecom equivalent of the black-and-white TV set the store keeps on a shelf in the back. It's there, it's cheap to pick up and it still works—but hardly anybody buys one these days and the store long ago stopped bothering to advertise it.

Digital wireless service debuted in 1992 and arrived in the Washington area in November 1995, when Sprint Spectrum launched its all-digital service. It didn't take long for the advantages of digital over analog to surface: better call clarity, longer battery life, more included services (such as voicemail and paging) and lower cost. Meanwhile, digital systems let wireless providers get more capacity out of their existing spectrum licenses and transmitter towers.

By 1998, digital phones were outselling analog models. Today, both Verizon Wireless (the former Bell Atlantic Mobile) and Cellular One, the two original analog providers in this area, report that about half of their customers have gone digital. New customers are opting for digital service by a wildly lopsided margin.

"In this Washington/Baltimore region, greater than 90 percent of our new . . . customers are digital," a Verizon spokeswoman e-mailed.

Cellular One, for its part, no longer even offers analog service in its own stores or at its Web site, although customers can still buy it from affiliated dealers.

Should you bother? Analog service isn't going to go away—all of the local wireless providers, save Nextel, rely on it as a backstop to their digital networks.

In our tests, both companies' analog services proved to be reasonably reliable, but not bulletproof. The Cell One phone rarely dropped a call—not even during rush hour on busy Braddock Road in Fairfax County. Voice quality was surprisingly good on the receiving end. But it had trouble picking up incoming calls, which sometimes disappeared into a hail of static.

Meanwhile, Verizon analog service was perfectly crisp and reliable at off-peak hours—late morning, mid-afternoon or after dinner time. Weekday drive-time calls, however, suffered from weak volume, bursts of static and general scratchiness, occasionally in combination with dropped calls and circuits-are-busy messages.

But if analog service can compete with digital service on in-town performance, it crumples when it comes to price. Both Cell One and Verizon's analog price plans are almost always undercut by digital alternatives that cost less and include more airtime. The two exceptions: Cell One's $17.99 "Economy" plan ($2 less than its cheapest digital plan) includes 15 minutes a month, and Bell Atlantic's $14.99 "Talk-Along" ($5 less than its low-end digital plan) includes no airtime and instead bills all use at 35 cents a minute.

Although you can save some extra money by getting a free phone (a frequent offer in the analog business), you'll have to pay extra for things that are included with digital services, such as voicemail and even call waiting. Analog services also continue the quaint custom of charging a dime or so for each call to a landline phone.

Both Cell One's and Verizon's minimum-use analog services can work for you—but only if you are positive you will use the phone solely in emergencies and won't give the number to anybody beyond immediate family members. If, however, you have plans beyond that—or if you've been using the same old analog phone for several years, simply renewing the contract—you should think about switching to digital.

Hope Katz Gibbs and Bob Massey contributed to this report.